

REMARKS

The February 13, 2006 Office Action required restriction from among:

- Group I: Claims 1 and 11, drawn to a Mowgli GPCR polypeptide, classified in class 530, subclass 350;
- Group II: Claims 2-5 and 12, drawn to a nucleic acid, a vector, and a host cell, classified in class 536, subclass 23.5 and class 435, subclass 320.1 and 325;
- Group III: Claims 6-9, drawn to a transgenic non-human animal, classified in class 800, subclass 8; and,
- Group IV: Claim 10, drawn to a method for identifying an antagonist of a Mowgli GPCR, classified in class 435, subclass 5.

Applicants hereby elect the claims of Group IV. Applicants have amended the claims herein, such that new claims 11-27 are now pending. As new claims 11-27 are all reasonably related to the method of claim 10, Applicants respectfully assert that this Amendment is consistent with the Groups set forth in the Office Action, and no further restriction requirement should be necessary.

The Office Action additionally the election of a single SEQ ID NO, although the Office Action states that such an election is a part of the Restriction Requirement, and is not a species election. Applicants hereby elect, with traverse, SEQ ID NO: 3, the human Mowgli amino acid sequence. Applicants respectfully submit that claims read upon the elected SEQ ID NO: 3.

As a traverse, it is noted that the requirement of an election of a single sequence is not an appropriate restriction requirement. Indeed, the Examiner's attention is directed to MPEP § 803.02, which states:

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. (Emphasis added.)

The Examiner's attention is further drawn to MPEP § 803.04, which states:

Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject

to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 *et seq.* Nevertheless, to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of such nucleotide sequences to be claimed in a single application. See *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68 (November 19, 1996).

It has been determined that normally ten sequences constitute a reasonable number for examination purposes (emphasis added).

Claim 13, written independently, recites a Markush group of only four sequences, well within the number deemed reasonable by the Commissioner, plus the combination of the two. Therefore, according to the MPEP itself, search and examination of the sequences recited in claim 13 does not constitute a serious burden.

Enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action, and the number of sequences claimed is significantly below the threshold set forth in the MPEP. All of the preceding, therefore, mitigate against restriction.

In view of the above, reconsideration and withdrawal of the Requirement for Restriction to a single sequence is requested, and an early action on the merits earnestly solicited.

Respectfully submitted,
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